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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,845	03/12/2004	Klaus Lidolt	03100199AA	5020

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11491 SUNSET HILLS ROAD
SUITE 340
RESTON, VA 20190

EXAMINER

JACKSON, BRANDON LEE

ART UNIT	PAPER NUMBER
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3772

MAIL DATE	DELIVERY MODE
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10/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/798,845

Applicant(s)

LIDOLT ET AL.

Examiner

Brandon Jackson

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

This action is in response to the telephone interview between the Examiner and Applicant's Representative. The Examiner agreed to withdraw the previous Brown rejection. Currently, claims 1-15 are pending in the instant application.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-5, 7, and 11-15 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 7,172,567. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter claimed in the instant

application is fully disclosed in the referenced patent. The patent and instant application are claiming common subject matter, as follows:

With respect to claims 1-5, 7, 11-13 of the instant application, all the limitations can be found in claims 1, 5, and 6 of patent '567. With respect to claim 1 of the instant application, all the limitations can be found in 1, 5, and 6 of patent '567.

With respect to claims 13-15 of the instant application, all the limitations can be found in claims 1 and 6-7 of patent '567.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-5, 7, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Stark et al. (US Patent 6,184,797). Stark discloses an orthopedic aid (2") with two parts (6ab", 6aa") which are movable relative to one another and with a locking device (21a) for locking the two parts (6ab", 6aa") in order to permit movement of the parts (6ab", 6aa") with respect to one another, wherein a signaling arrangement (76, 78, 77) is provided which emits a particular indicator or warning signal (76, 78, 77), responsive to means for detecting (fig. 15) the locking or unlocking of the device and alerting the user. The means for detecting (fig. 15) would be able to detect the state of the lock because it detects the position and all the parameters of the device, which would include the state

of the locking device (21a) because it would indicated whether the break/clutch mechanism (41a) is engaged or not. The orthopedic aid (2") comprises a detection arrangement (4") provided for detecting the state of the two parts (6ab", 6aa") and for emitting a signal indicating the state. The orthopedic aid (2") would be fully capable of emitting a signal upon unlocking of the locking device (21a). The signal can be visual (76), acoustic (78), and mechanical (77). The detection arrangement (4") generates the signal electrically (fig. 15). The locking device (21a) is electromechanical. The locking device (21a) can be actuated by a wireless signal (col. 4, lines 50-53).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 6 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stark et al. (US Patent 6,184,797) in view of Doty (US Patent 7,235,058). Stark

Art Unit: 3772

substantially discloses the claimed invention; see rejection to claim 1 above. Stark further discloses a stator coil (45a) that can have a current pass through it to create a magnetic field to attract the brake and lock the hinge (21a) in place. However, Doty teaches a hinge (20) comprising a movable locking pin (106) that locks the hinge (20) in place. Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the braking system to have a locking pin, as taught by Doty, instead of the current breaking mechanism in order to prevent slippage of the hinge when it is intended to be in the locked position.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stark et al. (US Patent 6,184,797) in view of Naft et al. (U.S. Patent Application Publication 2002/0183673). Stark substantially discloses the invention as claimed, see rejection of claim 1 above, however Stark fails to disclose an electromagnetic actuating arrangement with a low actuating force of not more than 2N; the locking mechanism cannot be unlocked by the actuating arrangement on account of frictional forces. However, Naft teaches an electromagnetic arrangement that operates at with relatively low electromagnetic attraction forces (paragraph 0050, lines 1-5). Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the joint of Stark with that taught by Naft in order to allow the joint to operate with low power consumption from the battery.

Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stark et al. (US Patent 6,184,797). Stark substantially discloses the claimed invention; see rejection to claim 11 above. Stark further discloses a handgrip (10") that triggers

actuating signals of a walking aid (fig. 11). The transmission is transported by wires (fig. 11), however, it would be obvious to one of ordinary skill in the art at the time for the invention to modify the cable to be a wireless transmitting means because it requires only routine skill in the art to replace wires with wireless transmitting signals in order to eliminate potential for tangled wires.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brandon Jackson whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 3772

Brandon Jackson 10/29/07
Brandon Jackson
Examiner
Art Unit 3772

BLJ

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SUPERVISORY PATENT EXAMINER
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